REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LETTERS PATENT APPEAL Nos. 2316-20 OF 2006**

% **Date of Decision** : 16th March, 2007.

Smt. Anju Bala & Ors .... Appellants.
Through Mr. Rajinder Dutt, Advocate.

VERSUS

D.E.S.U & Ors .... Respondents.
Through Ms. Avnish Ahalawat & Ms. Nidhi Gupta, Advocates.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J :

1. The appellants herein have challenged the judgment dated 8th May, 2006 passed in Civil Writ Petition No. 1163/95 and the order dated 3rd November, 2006 dismissing their Review Application No. 7971/06.

2. The appellants were appointed as steno-typist by the erstwhile

Delhi Electric Supply Undertaking (hereinafter referred to as DESU, for short) on ad-hoc basis during the period between May, 1989-February, 1990, after holding a competitive examination. The appellants were regularized on different dates in 1992.

3. By an employment notice no. F1(69)/92/AO(PIV)/94-95/16 dated 19th August, 1994, DESU invited applications from its employees who had three years regular service in the grade of steno typist as on 30th September, 1994, for appearing in a departmental competitive examination for appointment to the post of Junior Stenographer (English). The appellants together with the respondent nos 7-12 herein and others appeared in this examination.

4. On 23rd January, 1995, the respondent no.2 DESU declared that the respondent nos 7-12 had been selected for the appointment to the post of Junior Stenographer (English). Aggrieved by the selection of respondent nos 7-12, the appellants approached this Court by way of Civil Writ Petition No. 1163/95.

5. Before the learned Single Judge, it was urged by the appellants that the respondent nos 7-12 were not qualified and eligible for appointment to the said post, as they did not satisfy the

condition of having served as regular employees for a period of three years in the grade as on 30th September, 1994. It was submitted that the result of the appellants had also not been declared.

6. The same ground has been urged in this Appeal. Learned counsel for the appellant contended that the appellants were not permitted to appear in a similar Departmental Competitive Examination held in 1992 on the ground of not having completed three years' regular service.

7. Learned Single Judge, however, dismissed the writ petition, inter alia, holding that the appellants herein did not have actionable grievance. They had also appeared for selection as Jr. Stenographer in the limited departmental competitive examination in 1992, when they had not completed three years regular service in the grade of steno typist, but had failed to qualify. Ld. Single Judge also held that the appellants had not qualified in the exam held in 1994. The Review Application was also dismissed by the learned Single Judge on the ground that the appellants had participated in a similar test in 1992 though they had not put in three years regular service and did not meet the eligibility criteria. It was further held that the Court was not empowered to review it's earlier order by re-examining and re-

appreciating merits of the case once again.

8. Our attention has been drawn to the Recruitment Rules for appointment to the post of Jr. Stenographer (English). As per the said Recruitment Rules, post of Jr. Stenographer (English) is a selection post. 75% of the said posts are required to be filled by limited Departmental Examination and 25% posts are to be filled by promotion. The qualification for recruitment by limited Departmental Examination for the post of Jr.Stenographer (English) in DESU is Steno-typist having three years regular service in the Grade having requisite typing and shorthand speed. The relevant portion of the Rule reads as under:-

SCHEDULE

Recruitment Regulations for the post of Jr. Stenographer (English) in DESU (MCD) :

1.	Name of post	Jr. Stenographer (English)
2.	No. of posts	45
3.	Classification	Class-III
4.	Scale of pay	Rs.300-655
5.	Whether selection post or Non-selection post	Selection
6.	x x x x	
7.	x x x x x	
8.	x x x x	
9.	x x x x	

10.	10. Method of rectt. Whether by Direct Recruitment or by Deputation/ transfer and percentage of the vacancies to be filled by various methods	25% by promotion 75% by Limited Departmental Competitive Examination in accordance with the scheme of examination as may be prescribed in consultation with Staff Selection Commission.
11.	In case of rectt. by promotion/ deputation/ transfer grades from which promotion/ deputation/ transfer to be made	Promotion: Steno-typist (English) in DESU with 5 years' regular service in the grade. Recruitment by Ltd. Departmental Competitive Examination. Steno-typist (English) in DESU with 3 years' regular service in the grade on the results of the Ltd. Departmental Examination at a speed of 120 w.p.m. in the shorthand and 45 w.p.m. in typewriting in English, failing which 100 w.p.m. in shorthand and 30 w.p.m. in typewriting in English.

9. It is clear from the counter affidavit filed by DESU that it was not acting in consonance with the said Rules. It was stated in the additional affidavit filed by DESU that the stipulation of three years regular service was not adhered to in 1992 when candidates working on adhoc basis were also allowed to participate and appear in the limited Departmental Examination. Similarly, in 1994 again candidates who were working on adhoc basis were allowed to appear in the examination. It was further pointed out that in response to the

employment notice in question, 27 applications were received out of which only 18 persons had three years regular service. However, as before DESU took a lenient view and all 27 candidates were allowed to appear in the examination. In the additional affidavit it was also pointed out that as a matter of policy, DESU had always allowed adhoc employees to appear for limited departmental examination without any discrimination. This is unfortunate and is contrary to law. Recruitment Rules must be adhered to and are mandatory. The submission that in the past also Recruitment Rules had been violated and therefore they can be repeatedly violated with immunity deserves to be rejected. The submission is legally untenable. Repeated violations of law and mandatory provisions of the Recruitment Rules does not confer any right to violate the Rules in future. Strict compliance with the Recruitment Rules, specially mandatory statutory qualifications is a must. Only those who meet the minimum eligibility criteria can be allowed to participate in the limited departmental examination. Failure to adhere to the Recruitment Rules and the qualification/eligibility criteria prescribed would encourage nepotism, arbitrariness and certainly violates Articles 14 and 16 of the Constitution of India. The Supreme Court has repeatedly held that the

minimum qualification prescribed in the Recruitment Rules must be adhered to. The decision of the Supreme Court in case of ***National Fertilizers Ltd. v. Somvir Singh***, reported in (2006) 5 SCC 493 is relevant. It was observed:

> **"13.** The respondents herein were appointed only on applications made by them. Admittedly, no advertisement was issued in a newspaper nor was the employment exchange notified as regards existence of vacancies. It is now trite law that "State" within the meaning of Article 12 of the Constitution is bound to comply with the constitutional requirements as adumbrated in Articles 14 and 16 thereof. When the Recruitment Rules are made, the employer would be bound to comply with the same. Any appointment in violation of such Rules would render them as nullities. It is also well settled that no recruitment should be permitted to be made through back door."

10. The requirement in the Recruitment Rules is three years regular service in the Grade of Steno-typist. As per the employment notice dated 19th August, 1994 also the said minimum requirement of three years regular service in the Grade as on 30th September, 1994 had to be complied with. Unfortunately, the respondent Nos. 7-12 who did not fulfill the said criteria were allowed to participate in the limited departmental examination. It is quite possible that there may be others, who may not have applied keeping in view the

Recruitment Rules and the eligibility criteria laid down in the employment notice.

11. Learned Single Judge in the judgment dated 8th May, 2006 has observed that the appellants do not have any actionable grievance as they had joined services in 1989 and were regularised in 1992. It has been further observed that the appellants had appeared in the competitive examination held in 1995 but they had failed to qualify. This would not justify appointment of Respondents 7 to 12 who were not eligible. The question of selection of respondent Nos.7-12 and their appointments as Jr.Stenographer (English) was also required to be examined. In case the said respondent Nos.7-12 did not meet the minimum eligibility criteria for appointment as per the Recruitment Rules, they could not have been appointed to the said posts. Appointment of the respondent Nos.7-12 to the said posts may have affected the appellants even if they had not qualified in the limited departmental examination and the said respondents have become their seniors, even though they did not fulfill the requisite eligibility criteria for appointment. Thus, if the appellants subsequently qualify in the limited departmental examination for Jr. Stenographers (English), they would become juniors to the respondent Nos.7-12. We feel these

aspects have to be gone into and examined by the learned Single Judge. It is also to be examined whether the respondent Nos.7-12 were regularised as Steno-typist at any point of time and if so, from which date. Suitable directions may be required to be given in case the appellants have later on qualified in the limited departmental examination in respect of their seniority vis-a-vis the respondent Nos.7-12.

12. We have also examined the register produced before us by the respondents. The register shows that in the shorthand test at 100 w.p.m. for 10 minutes and typing held on 7th January, 1995, the appellants had been declared 'passed'. However, in the shorthand (English) test and typing held on the same date for 120 w.p.m. for 7 minutes, the appellants were declared 'failed'. The Recruitment Rules quoted above clearly specify that in the limited departmental examination, persons fulfilling the eligibility criteria should qualify the examination at a speed of 120 w.p.m. in shorthand (English) and 45 w.p.m. in typerwriting (English), failing which test in shorthand (English) at 100 w.p.m. and typewriting (English) at 30 w.p.m. has to be passed. The appellants, therefore, had not passed the test of speed of 120 w.p.m. in shorthand (English) and 45 w.p.m. in typing (English) but has passed the test of 100 w.p.m. typing (English). The question whether under the relevant Recruitment Rules the appellants had qualified depending upon the number of eligible candidates therefore has to be examined.

13. Another question which requires examination is whether the appellants were also eligible under the Recruitment Rules in

1994-95, has not been decided in the impugned judgment. The appellants were also appointed on adhoc basis between the period May 1989-February, 1990 and were regularized on different dates in 1992. As per the employment advertisement only those employees who had completed three years of regular service in the grade of Steno-typist on 30th September, 1994 were eligible to appear in the examination and for appointment to the post of Jr. Stenographer (English). Thus the appellants were not eligible as they had not completed three years of regular service in the Grade of Steno-typist on 30th September, 1994. However, it is a case of the appellants that regularization once given must relate back to the date of original appointment. This question has not been specifically examined and decided in the impugned judgment. For this reason also we feel that the matter should be remanded back. Learned Single Judge while examining this contention will also keep in mind whether the respondent Nos.7-12 herein were regularised and from what dates.

14. Learned Single Judge will also have to examine if the appointments are illegal and contrary to the Recruitment Rules then from which date the appellants and the respondent Nos.7-12 qualified for appointment and should be promoted as Jr. Stenographers (English).

15. In view of the facts and circumstances as stated above, we allow the present Appeal and set aside the judgment dated 8th May, 2006 and remand the matter back to the learned Single Judge to decide afresh, all issues and controversies in the light

of the observations made above. No Costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MARCH 16, 2007.
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